S.B.Civil Second Appeal No.317/2005.

Hadman Das and others.

vs.

Bhanwara Ram.

Date : 27.4.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr.JK Bhaiya, for the appellants.

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Heard learned counsel for the appellants.

The plaintiff/respondent filed a suit for injunction on the basis of his patta dated 16.4.1987. The defendants/appellants claimed that the patta was granted for the same land to them by the Gram Panchayat in the year 1997. The trial court dismissed the plaintiff's suit after considering the patta in question as well as the Commissioner's report and held that the plaintiff failed to prove his possession over the property in dispute. The trial court's judgment and decree dated 2.2.2001 was challenged by the plaintiff by filing regular first appeal wherein the first appellate court again considered the Commissioner's report and observed that the trial court misread the

Commissioner's report. The first appellate court also held that the alleged change in the neighbourhood of the plaintiff's plot was irrelevant because the patta was granted in 1987 and the plaintiff's witness categorically stated that the Patwar Bhawan was constructed much after 1987. In view of the above reasons, the courts below decided the question of fact only about possession of the plaintiff. After going through the evidence as well as Commissioner's report, it is clear that the appellate court has considered all evidence carefully and thereafter decreed the plaintiff's suit.

The appellants have submitted an application under Order 41 Rule 27 CPC and sought permission to place on record the certified copy of the order of Additional District Collector II, Jodhpur dated 23.11.2000 by which the plaintiff's revision petition challenging the defendant's patta was dismissed. The said order was passed even before the trial court decided the suit but for the reasons best known to the appellants, they did not choose to file copy of the said order before the trial court. Not only this even when the appeal remained pending for 4 years, the defendants did not choose to produce the said order. On this ground alone, the application can be rejected but after going through the facts mentioned in the order passed by the

Additional Collector, the revision was not dismissed on the ground that the patta was not granted to the plaintiff on 16.4.1987. In view of the above, the document is not relevant for deciding the controversy in issue.

In view of the above, no substantial question of law is involved in this appeal. Consequently, this appeal, having no merit, is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya